LAW REFORM COMMISSION OF BRITISH COLUMBIA

SUPREME COURT RULE 54

RECIPROCALLY ENFORCEABLE JUDGMENTS

(MINOR REPORT)

LRC 126

October, 1992

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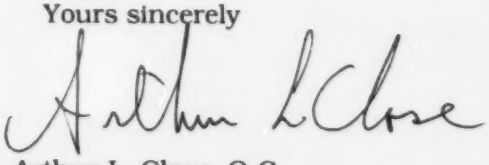
TO THE HONOURABLE COLIN GABELMANN
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:

Dear Mr. Attorney:

Re: Supreme Court Rule 54; Reciprocally Enforceable Judgments
(Minor Report, LRC 126)

Rule 54 of the Rules of Court stipulates the procedure to be followed in obtaining registration of an out-of-province judgment under the two reciprocal enforcement measures contained in the *Court Order Enforcement Act*. Previous Commission Reports have commented on certain deficiencies in Rule 54 and concerns surrounding its operation. In this Report we set out a revised version of the Rule and recommend its adoption.

Yours sincerely



October 27, 1992

Arthur L. Close, Q.C.
Chairman

Table of Contents

MINOR REPORT ON SUPREME COURT RULE 54 1
A. Enforcing Extra-provincial Judgments 1
B. Rule 54 2
C. Recommendation 3

APPENDIX A: DRAFT RULE 54 RECOMMENDED FOR ADOPTION BY LAW REFORM COMMISSION 4

APPENDIX B: SUPREME COURT RULE 54 [CURRENT VERSION] 9

APPENDIX C: *COURT ORDER ENFORCEMENT ACT*, PART 2 11

APPENDIX D: THE CANADA/U.K. CONVENTION 16
A. Background to the Convention 16
B. *Court Order Enforcement Act*, Part 2.2 17
C. The Convention 18

MINOR REPORT ON SUPREME COURT RULE 54

A. Enforcing Extra-provincial Judgments

The enforcement of judgments from outside the province is a topic that has received a good deal of attention from the Law Reform Commission in the past five years.[1] This work culminated early in 1992 with a recommendation that the *Uniform Enforcement of Canadian Judgments Act* be adopted in British Columbia.[2] The legislature moved swiftly on this recommendation and the *Enforcement of Canadian Judgments Act* was passed at the spring session of the British Columbia legislature.[3]

The Act provides a new and streamlined mechanism for enforcing judgments emanating from other provinces which formerly could be enforced only by bringing an action on the out-of-province judgment or by proceeding under the reciprocal enforcement of judgments scheme set out in Part 2 of the *Court Order Enforcement Act*.[4] When the *Enforcement of Canadian Judgments Act* is brought into force, the reciprocal enforcement of judgments scheme, while it will diminish in importance, will not become wholly redundant since it also acts as a vehicle for the enforcement of judgments from a number of territories outside Canada which have been designated as reciprocating jurisdictions.[5]

The enforcement of judgments from the United Kingdom occupy a special position. In the mid-1980s, a Convention on the enforcement of judgments was negotiated between Canada and the United Kingdom. The Convention was brought into force in British Columbia through the enactment of Part 2.2 of the *Court Order Enforcement Act*.[6]

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1. We have issued four documents that touch on this topic. *See*: *The Enforcement of Judgments Between Canadian Provinces* (W.P. 64, 1989); *Study Paper on Court Jurisdiction* (1989); *Interim Report on Enforcing Judgments from Outside the Province* (LRC 117, 1991); *The Uniform Enforcement of Canadian Judgments Act* (LRC 123, 1992).

2. *See* LRC 123 *ibid.* The creation of the *Uniform Enforcement of Canadian Judgments Act* was, in fact, stimulated by our Working Paper on *The Enforcement of Judgments Between Canadian Provinces ibid.* and draft legislation contained in the Working Paper formed the point of departure for the preparation of the Uniform Act.

3. S.B.C. 1992, c. 37. The Act has not yet been brought into force.

4. *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75. Part 2 of the Act is set out at Appendix C to this Report.

5. *See* Appendix C.

6. A note on the background to the Convention, Part 2.2, and the full text of the Canada/U.K. Convention itself are set out in Appendix D to this Report.

B. Rule 54

Neither Part 2 of the *Court Order Enforcement Act* nor the Canada/U.K. Convention stipulate the full procedure to be adopted in translating a judgment from outside the province into one that is enforceable in British Columbia. For that reason, Rule 54 of the *Rules of Court* was enacted.[7] Rule 54 purports to supplement both Part 2 and the Convention with the necessary procedural guidance.

In our *Working Paper on the Enforcement of Judgments Between Canadian Provinces*[8] we noted a number of ways in which Rule 54 and Part 2 are not in harmony. A closer reading of both reveals a number of other concerns. These concerns go beyond the simple question of conflicts with Part 2 of the *Court Order Enforcement Act*. For example, Rule 54 draws unnecessary distinctions between the procedure to register judgments under Part 2 and the procedure to register judgments under the Canada/U.K. Convention. These distinctions seem difficult to justify. A greater degree of procedural harmony is called for. The current framing of Rule 54 is unsatisfactory in a number of other ways.

Set out below is a limited sampling of the concerns raised by Rule 54:

1. Rule 54 says that application for registration may be made without notice to the judgment debtor. Under Part 2, however, an application without notice is permitted only if the debtor either was personally served with the court documents that led to the judgment or submitted to the court's jurisdiction.

2. Rule 54 requires that the affidavit which accompanies an application for registration of the judgment state that the defendant was duly served with court documents for the earlier proceeding. There are, however, situations where a judgment is enforceable even where the defendant was not duly served such as where the judgment debtor fully participated in the earlier proceeding or even, perhaps, initiated it.

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7. The text of Rule 54 is set out in Appendix B.
8. *Supra*, n. 1, page 21.

3. According to Part 2 (section 31(3)), where application for registration is made *ex parte*, the application must be accompanied by a certificate from the original court in a prescribed form. Rule 54, in describing the materials that must support an application, makes no reference to that certificate.

4. Rule 54 requires that the affidavit in support of an application for registration state that the original court had jurisdiction to grant the judgment. Whether a court does or does not have jurisdiction usually involves a highly technical conclusion of law. Its inclusion in this kind of affidavit seems inappropriate.

C. Recommendation

Our Working Paper made no proposals for the improvement of Rule 54. At a later stage of the project, however, the Attorney General's Rules Committee indicated that the Law Reform Commission's involvement in preparing a revised Rule 54 would be welcome.

We therefore proceeded with the preparation of a version of Rule 54 which met the concerns that were evident to us. Our draft was circulated to the Rules Committee and their response encouraged us to give it wider exposure in the form of this Minor Report.

The draft of a revised Rule 54 is set out in Appendix A and the Commission recommends that it be adopted in the Rules of Court. We wish to be clear, however, that our principal aim has been to provide the Rules Committee with a suitable point of departure for its own work. The Committee should not feel inhibited about modifying the draft to meet concerns that arise out of its deliberations or its consultation processes.

APPENDIX A

DRAFT RULE 54

RECOMMENDED FOR ADOPTION BY LAW REFORM COMMISSION

RULE 54 - FOREIGN JUDGMENTS

Definitions

(1) In this rule

"reciprocally enforceable judgment" means a judgment that may be registered under Part 2 or Part 2.2 of the *Court Order Enforcement Act*,

"convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the English language version of which is set out in Schedule 4 of the *Court Order Enforcement Act*.

Comment: the definition of "reciprocally enforceable judgment" is new. It is convenient to have a compendious expression to refer to judgments registered under both parts. The term "foreign judgment" is not available since it is needed in subrule (9) which concerns actions on judgments.

Application under *Court Order Enforcement Act*

(2) An application to register a reciprocally enforceable judgment shall be made by originating application.

Comment: This carries forward current subrule (2)

Affidavit in support

(3) The application for registration of a reciprocally enforceable judgment shall be supported by an affidavit

(a) exhibiting

(i) a certified copy of the judgment under the seal of the original court, and

(ii) where section 31(2) of the *Court Order Enforcement Act* applies to the application, the certificate referred to in section 31(3), and

Comment: The requirement in clause (ii) is new. Rule 54 currently contains no requirement that the Schedule 2 Certificate be part of the application documentation although s. 31(3) is quite clear that it is required.

(iii) a certified translation of the judgment or certificate if made in a language other than English, and

(b) stating, to the best of the information and belief of the deponent,

(i) that the judgment creditor is entitled to enforce the judgment,

(ii) the amount presently owing on the judgment,

(iii) the full name, occupation, and usual or last known residence or place of business of the judgment creditor and judgment debtor respectively, and

Comment: The drafting of clause (iii) has been modernized somewhat from the requirement in current Rule (3)(c)(v).

(iv) whether the judgment debtor

A. was personally served with the process of the original court,

B. was served with the process of the original court other than through personal service, or

C. participated in the proceeding or otherwise submitted to the jurisdiction of the original court.

Comment: The "whether" and subclause C make it clear that service is not a sine qua non of a registrable judgment. See Report, supra, as to the deficiencies of the current formulation. The phrase "unless this appears from the judgment," currently in subrule (3)(c)(iii), has been omitted as unnecessary and confusing. It seem to have been drawn from Article VI, para. 4(c) of the convention and is optional in any event. The distinction drawn between subclauses A and B will enable the court to decide whether an application under Part 2 is properly made ex parte.

(v) that the judgment is not one which is disqualified from registration either under section 31(6) of the *Court Order Enforcement Act* or under Article II, paragraph 2, or Article IV, paragraph 1, of the convention, whichever is applicable.

Comment: Two changes are made in clause (v). First the drafting has been altered slightly from current subrule (3)(c)(ii). Second, a reference to Article IV, para 1 has been added.

Comment: (This comment concerns subrule (3)(b) generally) Omitted from the affidavit requirement is an assertion that the original court had jurisdiction. This involved a conclusion of law which may be highly complex. It seems inappropriate as an affidavit requirement. Technically, it is probably unnecessary to carry forward clauses (iv) and (v). The only real function of clause (v) is to force the person who has carriage of the application to look at the relevant legislation.

Ex parte application

(4) Notice need not be given to the judgment debtor of an application to register a reciprocally enforceable judgment where the application is made
(a) under Part 2.2 of the *Court Order Enforcement Act*, or
(b) under Part 2 of the *Court Order Enforcement Act* and section 31(2) applies to the application

Comment: This rule has been modified to conform with the provisions of Part 2 concerning when an ex parte application may be made.

Form of order to register

(5) The order giving leave to register the judgment shall be in Form 62.

Comment: No change has been made to this subrule. Form 62 itself should be revieued. The "liberty to apply" provision seems unnecessary. If the registration is under Part 2, the substantive right to apply flows from s. 36(1)(b) and it is unnecessary to incorporate it into the order. If the registration is under the convention, there is no basis for the "liberty to apply" in either the convention itself or Rule 54. If the purpose is to inform the judgment debtor of legal rights attached to the order, it should be noted that Part 2 only requires that "notice" of the registration be served on the judgment debtor. The form of the notice is not stipulated and it may or may not include service of the order.

Notice of registration

(6) Where a reciprocally enforceable judgment is registered, and the judgment debtor had no notice of the application for registration, notice of the registration shall be given to the judgment debtor within one month after the registration.

Comment: This subrule is new. So far as Part 2 registrations are concerned, it merely repeats the procedural requirement of s. 36(1)(a). So far as registrations under the convention are concerned, it imposes a requirement which did not previously exist. It seems desirable that the two schemes should be in harmony on this point of procedure.

Setting aside registration of judgment under convention

(7) The court may order that the registration of a judgment under Part 2.2 of the *Court Order Enforcement Act* be set aside where the judgment debtor was not duly served with the process of the original court, unless the judgment debtor participated in the proceeding or otherwise submitted to the jurisdiction of the original court

Stay of Enforcement

(8) The court may make an order staying or limiting the enforcement of a judgment registered under Part 2.2 of the *Court Order Enforcement Act*, subject to any terms and for any period the court considers appropriate where the judgment is not final, an appeal is pending, or the time for appeal has not expired.

Comment - subrules (7) and (8): Rule 54 currently contains a provision [subrule (6)] which permits the court to set aside the registration of a judgment under the convention if any of 3 circumstances are present. That subrule is a reflection of Article IV, para. 2, of the convention which, in virtually identical language, permits the province to make such a "law." A difficulty is that Article IV, para. 4 provides that in any case where an application might be made to set aside the registration, the judgment is not enforceable.

This result is not offensive where the judgment debtor was not served or had not submitted to the original court's jurisdiction. Its operation is questionable where, at the time of registration, the time for appeal had not expired. If the registration is set aside and the period subsequently expires the creditor is put to the expense of re-applying for registration. The better way of dealing with this problem is through a stay of proceedings. This is the approach of the Enforcement of Canadian Judgments Act and the approach Rule 54 currently takes to actions on foreign judgments. Part 2 may be out of step with this approach, but this cannot be remedied through a revision of Rule 54.

Draft subrule (7) carries forward the approach of the current rule in those cases of defective notice etc. The drafting has been modified to parallel that of draft subrule (3)(b)(iv). Draft subrule (8) embodies the stay of proceedings approach with respect to judgments where appeal rights have not yet lapsed or been exhausted.

This draft omits any equivalent to current subrule (6)(b) which permitted registration to be set aside when there was a prior judgment. The meaning of this provision is unclear in relation to the kinds of prior judgments which can trigger a deregistration. The policy behind the provision is obscure. In the absence of any convincing argument for its inclusion, it has been omitted.

Stay of proceeding in action on foreign judgment

(9) A defendant in an action on a foreign judgment, whether or not it is a reciprocally enforceable judgment, on proof that an appeal or other proceeding in the nature of an appeal is pending, or the time for appeal has not expired, may apply for an order staying the proceeding until the determination of the appeal or other proceeding on terms that the court may impose.

Comment: This carries forward current subrule (7). The only change is to add the words "whether or not it is a reciprocally enforceable judgment." The purpose is to convey to the reader that the subrule is concerned with a different kind of enforcement mechanism. For the same reason, the marginal note has been changed.

APPENDIX B

SUPREME COURT RULE 54

[CURRENT VERSION]

RULE 54

FOREIGN JUDGMENTS

Definition of "convention"

(1) In this rule "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the English language version of which is set out in Schedule 4 of the *Court Order Enforcement Act*.

Application under *Court Order Enforcement Act*

(2) An application to have a foreign judgment registered under Part 2 of the *Court Order Enforcement Act* or under the convention, shall be made by originating application.

Affidavit in support

(3) The application for registration shall be supported by an affidavit
- (a) exhibiting a certified copy of the judgment under the seal of the court where the judgment was obtained,
- (b) exhibiting a certified translation of the judgment, if given in a language other than English, and
- (c) stating, to the best of the information and belief of the deponent,
  - (i) that the judgment creditor is entitled to enforce the judgment,
  - (ii) that the judgment is not one which may not be registered under either section 31(6) of the *Court Order Enforcement Act* or Article II, paragraph 2 of the convention,
  - (iii) that the judgment debtor was duly served with the process of the original court, unless this appears from the judgment,
  - (iv) that the original court had jurisdiction to grant the judgment,
  - (v) the full name, trade or business, and usual or last known place of abode or of business of the judgment creditor and judgment debtor respectively, so far as is known to the deponent, and
  - (vi) the amount presently owing on the judgment.

Ex parte application

(4) Notice need not be given to the judgment debtor of an application under subrule (2).

Form of order to register

(5) The order giving leave to register the judgment shall be in Form 62.

Setting aside registration of judgment under convention

(6) An order that a foreign judgment be registered under the convention may be set aside where the court is satisfied that

(a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and, in either case, did not appear,

(b) another judgment has been given by a court having jurisdiction in the matter in dispute before the date of judgment in the original court, or

(c) the judgment is not final, or an appeal is pending, or the time for appeal has not expired.

Stay of proceeding on foreign judgment

(7) A defendant in an action on a foreign judgment, on proof that an appeal or other proceeding in the nature of an appeal is pending, or the time for appeal has not expired, may apply for an order staying the proceeding until the determination of the appeal or other proceeding on terms that the court may impose.

APPENDIX C

COURT ORDER ENFORCEMENT ACT - PART 2

[For convenience, a list of the jurisdictions declared to be reciprocating states for the purposes of part 2 is set out at the end of this Appendix.]

PART 2

RECIPROCAL ENFORCEMENT OF COURT ORDERS

Interpretation

30. (1) In this Part

"judgment" means a judgment or order of a court in a civil proceeding, where money is made payable, and includes an award in an arbitration proceeding if the award, under the law in force in the state where it was made, has become enforceable in the same manner as a judgment given by a court in that state, but does not include an order for the periodical payment of money as alimony or as maintenance for a spouse or former spouse or reputed spouse or a child of any other dependant of the person against whom the order was made;

"judgment creditor" means the person by whom the judgment was obtained, and includes his executors, administrators, successors and assigns;

"judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the state in which it was given;

"original court" in relation to a judgment means the court by which the judgment was given;

"registering court" in relation to a judgment means the court in which the judgment is registered under this Part.

(2) All references in this Part to personal service mean actual delivery of the process, notice or other document, to be served, to the person to be served with it personally; and service shall not be held not to be personal service merely because the service is effected outside the state of the original court.

Application for registration of judgment

31. (1) Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to the Supreme Court within 6 years after the date of the judgment to have the judgment registered in that court, and on application the court may order the judgment to be registered.

(2) An order for registration under this Part may be made ex parte in any case in which the judgment debtor

(a) was personally served with process in the original action; or

(b) though not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court,

and in which, under the law in force in the state where the judgment was made, the time in which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been made and has been disposed of.

(3) In a case to which subsection (2) applies, the application shall be accompanied by a certificate issued from the original court and under its seal and signed by a judge or the clerk of it.

(4) The certificate shall be in the form set out in Schedule 2, or to the same effect, and shall set forth the particulars as to the matters mentioned in it.

(5) In a case to which subsection (2) does not apply, notice of the application for the order as is required by the rules or as the judge considers sufficient shall be given to the judgment debtor.

(6) No order for registration shall be made if the court to which application for registration is made is satisfied that

(a) the original court acted either
  (i) without jurisdiction under the conflict of laws rules of the court to which application is made; or
  (ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor;
(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;
(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business in the state of that court or had agreed to submit to the jurisdiction of that court;
(d) the judgment was obtained by fraud;
(e) an appeal is pending or the time in which an appeal may be taken has not expired;
(f) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or
(g) the judgment debtor would have a good defence if an action were brought on the judgment.

(7) Registration may be effected by filing the order and an exemplification or certified copy of the judgment with the registrar of the court in which the order was made, and the judgment shall be entered as a judgment of that court.

(8) Where a judgment provides for the payment of money and also contains provisions for other matters, the judgment may only be registered under this Part for the payment of money.

Jurisdiction to issue certificate

32. Where the original court is a court in the Province, that court has jurisdiction to issue a certificate for registration of a judgment in a reciprocating state.

Conversion to Canadian currency

33. Where a judgment sought to be registered under this Part makes payable money expressed in a currency other than the currency of Canada, the registrar shall determine the equivalent of that sum in the currency of Canada on the basis of the rate of exchange prevailing at the date of the judgment in the original court, as ascertained from any branch of any chartered bank; and the registrar shall certify on the order for registration the sum determined expressed in the currency of Canada; and, on its registration, the judgment shall be a judgment for the sum certified.

Where judgment in language other than English

34. Where a judgment sought to be registered under this Part is in a language other than the English language, the judgment or the exemplification or certified copy of it, as the case may be, shall have attached to it for this Part a translation in the English language approved by the court, and on approval being given the judgment shall be deemed to be in the English language.

Effect of registration

35. Where a judgment is registered under this Part,

(a) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given originally in the registering court on the date of the registration, and proceedings may be taken on it accordingly, except that where the registration is made under an ex parte order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of one month after the judgment debtor has had notice of the registration or a further period as the registering court may order;

(b) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(c) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy from the original court and of the application for registration, are recoverable in the same manner as if they were sums payable under the judgment if the costs are taxed by the proper officer of the registering court and his certificate is endorsed on the order for registration.

Order sought by one party only

36. (1) Where a judgment is registered under an order made *ex parte*

(a) within one month after the registration or within a further period as the registering court may at any time order, notice of the registration shall be served on the judgment debtor in the same manner as a writ of summons is required to be served; and

(b) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

(2) On such an application the court may set aside the registration on any of the grounds mentioned in section 31 (6) and on terms the court thinks fit.

Rules of court

37. Rules of court may be made for practice and procedure, including costs, in proceedings under this Part; and, until rules are made under this section, the rules of the registering court, including rules as to costs, apply with the necessary changes.

Exercise of powers

38. Subject to the Rules of Court, any of the powers conferred by this Part on a court may be exercised by that court.

Reciprocating jurisdictions

39. (1) Where the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement of judgments given in the Province, he may by order declare it to be a reciprocating state for this Part.

(2) The Lieutenant Governor in Council may revoke an order made under subsection (1), and the state for which the order was made ceases to be a reciprocating state for this Part.

Saving

40. Nothing in this Part deprives a judgment creditor of the right to bring action on his judgment, or on the original cause of action,

(a) after proceedings have been taken under this Part; or

(b) instead of proceedings under this Part;

and the taking of proceedings under this Part, whether or not the judgment is registered, does not deprive a judgment creditor of the right to bring action on the judgment or on the original cause of action.

General purpose

41. This Part shall be interpreted so as to effect its general purpose of making uniform the law of the Provinces that enact it.

JURISDICTIONS DECLARED TO BE RECIPROCATING STATES FOR THE PURPOSES OF PART 2

North America:

in Canada:

- Alberta
- Manitoba
- New Brunswick
- Newfoundland
- Northwest Territories
- Nova Scotia
- Ontario
- Prince Edward Island
- Saskatchewan
- Yukon Territory

in the United States:

- Alaska
- California
- Colorado
- Idaho
- Oregon
- Washington

Europe:

- Austria
- Federal Republic of Germany (including Land Berlin)
- United Kingdom

South Pacific:

in Australia:

- Australian Antarctic Territory
- Australian Capital Territory
- Coral Sea Islands Territory
- Heard and McDonald Islands Territory
- New South Wales
- Northern Territory of Australia
- Queensland
- South Australia
- Tasmania
- Territory of Ashmore and Cartier Islands
- Victoria

APPENDIX D

THE CANADA/U.K. CONVENTION

A. Background to the Convention

The entry of the United Kingdom into the European Economic Community involved adherence to a convention with other community members respecting the enforcement of judgments among member states -- the *Brussels Convention* of 1968. The *Brussels Convention* requires that the United Kingdom enforce judgments against persons having assets in the United Kingdom where the judgment was entered by a member state in accordance with the jurisdictional rules contained in the Convention.

Those jurisdictional rules are broader than the common law rules which they displaced in the United Kingdom. The result of United Kingdom adherence to the *Brussels Convention* is that a Canadian resident who owns property in the United Kingdom may find that the property is vulnerable to a European judgment which previously would not have been enforceable in England and which might also be unenforceable in Canada.[1]

Article 59 of the *Brussels Convention* permits the United Kingdom to assume, in a Convention, an obligation toward a "third state" not to recognize judgments given in other contracting states against defendants domiciled or habitually resident in the "third state." One reason for entering into arrangements with the United Kingdom in relation to the enforcement of judgments between the United Kingdom and Canada was to ensure that Canada acquired the status of a "third state" against whom the United Kingdom would not be obliged to enforce European judgments.

Achieving that goal does not require lengthy or elaborate drafting. It is dealt with in a single short Article of the Canada/U.K. Convention.[2]

In addition to the "third state" question, a further aim of a Canada/U.K. Convention was to establish a scheme for reciprocal enforcement of judgments between Canada and the United Kingdom Two different approaches to this were possible and each was embodied in a draft convention which was circulated for comment in the early 1980's. The "long form" of the Convention (the one which was eventually adopted) embodied a self-contained reciprocal enforcement scheme. The "short form" merely listed as a protocol the reciprocal enforcement legislation in force in the various units of the contracting states and provided for adherence in accordance with their constitutional processes.

If the short form had been adopted, the United Kingdom would simply have become another reciprocating jurisdiction for the purposes of Part 2 of the *Court Order Enforcement Act* and British Columbia judgments would become entitled to enforcement under 1933 English legislation to the same effect. This would greatly have simplified the drafting of Rule 54.

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1. The law respecting the enforcement of foreign judgments in British Columbia is in a state of flux as the courts work through the implications of the decision of the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoy*, [1990] 3 S.C.R. 1077.

2. See Article IX.

B. *Court Order Enforcement Act*, Part 2.2

PART 2.2

CANADA - UNITED KINGDOM CONVENTION

Interpretation

41.2 In this Part "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the English language version of which is set out in Schedule 4.

Convention in force in Province

41.3 On, from and after the date the convention enters into force in respect of the Province as determined by the convention, the convention is in force in the Province and the provisions thereof are law in the Province. [Note: see section 41.5 of this Act.]

Request to designate Province and courts

41.4 The Attorney General shall

(a) request the government of Canada to designate the Province as a province to which the convention extends, and

(b) determine the courts of the Province to which application for registration of a judgment given by a court of the United Kingdom may be made and request the government of Canada to designate those courts for the purpose of the convention.

Publication of date and courts

41.5 The Attorney General shall cause to be published in the Gazette the date the convention comes into force in the Province and the courts to which application for registration of a judgment given by a court of the United Kingdom may be made.

Regulations

41.6 The Lieutenant Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Part.

This Part prevails

41.7 Where there is a conflict between this Part and any enactment, this Part prevails.

C. The Convention

COURT ORDER ENFORCEMENT ACT

SCHEDULE 4

CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND PROVIDING FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Canada,

and

The United Kingdom of Great Britain and Northern Ireland,

DESIRING to provide on the basis of reciprocity for the recognition and enforcement of judgments in civil and commercial matters;
HAVE AGREED AS FOLLOWS:

PART I

DEFINITIONS

ARTICLE I

In this Convention

(a) "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

(b) "the 1968 Convention" means the Convention of 27th September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended;

(c) "court of a Contracting State" means

(i) in relation to the United Kingdom, any court of the United Kingdom or of any territory to which this Convention extends pursuant to Article XIII;

(ii) in relation to Canada, the Federal Court of Canada or any court of a province or territory to which this Convention extends pursuant to Article XII,

and the expressions "court of the United Kingdom" and "court of Canada" shall be construed accordingly;

(d) "judgment" means any decision, however described (judgment, order and the like), given by a court in a civil or commercial matter, and includes an award in proceedings on an arbitration if the award has become enforceable in the territory of origin in the same manner as a judgment given by a court in that territory;

(e) "judgment creditor" means the person in whose favour the judgment was given, and includes his executors, administrators, successors and assigns;

(f) "judgment debtor" means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the territory of origin;
(g) "original court" in relation to any judgment means the court by which the judgment was given;
(h) "registering court" means a court to which an application for the registration of a judgment is made;
(i) "territory of origin" means the territory for which the original court was exercising jurisdiction.

PART II

SCOPE OF THE CONVENTION

ARTICLE II

1. Subject to the provisions of this Article, this Convention shall apply to any judgment given by a court of a Contracting State after the Convention enters into force and, for the purposes of Article IX, to any judgment given by a court of a third State which is a party to the 1968 Convention.

2. This Convention shall not apply to
(a) orders for the periodic payment of maintenance;
(b) the recovery of taxes, duties or charges of a like nature or the recovery of a fine or penalty;
(c) judgments given on appeal from decisions of tribunals other than courts;
(d) judgments which determine
  (i) the status or legal capacity of natural persons;
  (ii) custody or guardianship of infants;
  (iii) matrimonial matters;
  (iv) succession to or the administration of the estates of deceased persons;
  (v) bankruptcy, insolvency or the winding up of companies or other legal persons;
  (vi) the management of the affairs of a person not capable of managing his own affairs.

3. Part III of this Convention shall apply only to a judgment whereby a sum of money is made payable. 4. This Convention is without prejudice to any other remedy available to a judgment creditor for the recognition and enforcement in one Contracting State of a judgment given by a court of the other Contracting State.

PART III

ENFORCEMENT OF JUDGMENTS

ARTICLE III

1. Where a judgment has been given by a court of one Contracting State, the judgment creditor may apply in accordance with Article VI to a court of the other Contracting State at any time within a period of six years after the date of the judgment (or, where there have been proceedings by way of appeal against the

judgment, after the date of the last judgment given in those proceedings) to have t judgment registered, and on any such application the registering court shall, subje to such simple and rapid procedures as each Contracting State may prescribe and to the other provisions of this Convention, order the judgment to be registered.

2. In addition to the sum of money payable under the judgment of the original court including interest accrued to the date of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, if any, including the costs of obtaining a certified copy of the judgment from the original court.

3. If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

4. Subject to the other provisions of this Convention

(a) a registered judgment shall, for the purposes of enforcement, be of the same force and effect;
(b) proceedings may be taken on it; and
(c) the registering court shall have the same control over its enforcement,

as if it had been a judgment originally given in the registering court with effect from the date of registration.

ARTICLE IV

1. Registration of a judgment shall be refused or set aside if

(a) the judgment has been satisfied;
(b) the judgment is not enforceable in the territory of origin;
(c) the original court is not regarded by the registering court as having jurisdiction;
(d) the judgment was obtained by fraud;
(e) enforcement of the judgment would be contrary to public policy in the territory of the registering court;
(f) the judgment is a judgment of a country or territory other than the territory of origin which has been registered in the original court or has become enforceable in the territory of origin in the same manner as a judgment of that court; or
(g) in the view of the registering court the judgment debtor either is entitled to immunity from the jurisdiction of that court or was entitled to immunity in the original court and did not submit to its jurisdiction.

2. The law of the registering court may provide that registration of a judgment may or shall be set aside if

(a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and, in either case, did not appear;
(b) another judgment has been given by a court having jurisdiction in the matter in dispute prior to the date of judgment in the original court; or
(c) the judgment is not final or an appeal is pending or the judgment debtor is entitled to appeal or to apply for leave to appeal against the judgment in the territory of origin.

3. If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall be registered only in respect of the balance remaining payable at that date.

4. A judgment shall not be enforced so long as, in accordance with the provisions of this Convention and the law of the registering court, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until the application has been finally determined.

ARTICLE V

1. For the purposes of Article IV (1) (c) the original court shall be regarded as having jurisdiction if

(a) the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings;
(b) the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court;
(c) the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the territory of origin;
(d) the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted habitually resident in, or being a body corporate had its principal place of business in, the territory of origin;
(e) the judgment debtor, being a defendant in the original court, had an office or place of business in the territory of origin and the proceedings were in respect of a transaction effected through or at that office or place; or
(f) the jurisdiction of the original court is otherwise recognised by the registering court.

2. Notwithstanding anything in sub-paragraphs (d), (e) and (f) of paragraph (1), the original court shall not be regarded as having jurisdiction if

(a) the subject matter of the proceedings was immovable property outside the territory of origin; or
(b) the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the territory of origin.

PART IV

PROCEDURES

ARTICLE VI

1. Any application for the registration in the United Kingdom of a judgment of a court of Canada shall be made

(a) in England and Wales, to the High Court of Justice;
(b) in Scotland, to the Court of Session;
(c) in Northern Ireland, to the High Court of Justice.

2. Any application for the registration in Canada of a judgment of a court of the United Kingdom shall be made

(a) in the case of a judgment relating to a matter within the competence of the Federal Court of Canada, to the Federal Court of Canada;
(b) in the case of any other judgment, to a court of a province or territory designated by Canada pursuant to Article XII.

3. The practice and procedure governing registration (including notice to the judgment debtor and applications to set registration aside) shall, except as otherwise provided in this Convention, be governed by the law of the registering court.

4. The registering court may require that an application for registration be accompanied by
(a) the judgment of the original court or a certified copy thereof;
(b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;
(c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and
(d) particulars of such other matters as may be required by the rules of the registering court.

ARTICLE VII

All matters concerning
(a) the conversion of the sum payable under a registered judgment into the currency of the territory of the registering court; and
(b) the interest payable on the judgment with respect to the period following its registration, shall be determined by the law of the registering court.

PART V

RECOGNITION OF JUDGMENTS

ARTICLE VIII

Any judgment given by a court of one Contracting State for the payment of a sum of money which could be registered under this Convention, whether or not the judgment has been registered, and any other judgment given by such a court, which if it were a judgment for the payment of a sum of money could be registered under this Convention, shall, unless registration has been or would be refused or set aside on any ground other than that the judgment has been satisfied or could not be enforced in the territory of origin, be recognised in a court of the other Contracting State as conclusive between the parties thereto in all proceedings founded on the same cause of action.

PART VI

RECOGNITION AND ENFORCEMENT OF THIRD STATE JUDGEMENTS

ARTICLE IX

1. The United Kingdom undertakes, in the circumstances permitted by Article 59 of the 1968 Convention, not to recognise or enforce under that Convention any

judgment given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Canada.

2. For the purposes of paragraph (1)

(a) an individual shall be treated as domiciled in Canada if and only if he is resident in Canada and the nature and circumstances of his residence indicate that he has a substantial connection with Canada; and

(b) a corporation or association shall be treated as domiciled in Canada if and only if it is incorporated or formed under a law in force in Canada and has a registered office there, or its central management and control is exercised in Canada.

PART VII

FINAL PROVISIONS

ARTICLE X

This Convention shall not affect any conventions, international instruments or reciprocal arrangements to which both Contracting States are or will be parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

ARTICLE XI

Either Contracting State may, on the exchange of instruments of ratification or at any time thereafter, declare that it will not apply the Convention to a judgment that imposes a liability which that State is under a treaty obligation toward any other State not to recognise or enforce. Any such declaration shall specify the treaty containing the obligation.

ARTICLE XII

1. On the exchange of instruments of ratification, Canada shall designate the provinces or territories to which this Convention shall extend and the courts of the provinces and territories concerned to which application for the registration of a judgment given by a court of the United Kingdom may be made.

2. The designation by Canada may be modified by a further designation given at any time thereafter.

3. Any designation shall take effect three months after the date on which it is given.

ARTICLE XIII

1. The United Kingdom may at any time while this Convention is in force declare that this Convention shall extend to the Isle of Man, any of the Channel Islands, Gibraltar or the Sovereign Base Areas of Akrotiri and Dhekelia (being territories to which the 1968 Convention may be applied pursuant to Article 60 of that Convention).

2. Any declaration pursuant to paragraph (1) shall specify the courts of the territories to which application for the registration of a judgment given by a court of Canada shall be made.

3. Any declaration made by the United Kingdom pursuant to this Article may be modified by a further declaration given at any time thereafter. 4. Any declaration pursuant to this Article shall take effect three months after the date on which it is given.

ARTICLE XIV

1. This Convention shall be ratified; instruments of ratification shall be exchanged at London.

2. This Convention shall enter into force three months after the date on which instruments of ratification are exchanged.

3. This Convention may be terminated by notice in writing by either Contracting State and it shall terminate three months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Ottawa, this 24th day of April, 1984 in the English and French languages, each version being equally authentic.

"John L. Tait"
For the Government of Canada
"R.H. Baker"
For the Government of the United Kingdom of Great Britain and Northern Ireland.

[Note: Convention in force in the Province January 1, 1987, see Notice, Part II Gazette, Vol. 29, p. 431.]